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NO. 36799-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

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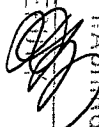
STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER SIEYES,

Appellant.

FILED
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DIVISION II
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ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 07-8-00353-7

SUPPLEMENTAL BRIEF OF RESPONDENT

RUSSELL D. HAUGE
Prosecuting Attorney

TODD L. DOWELL
Deputy Prosecuting Attorney

614 Division Street
Port Orchard, WA 98366
(360) 337-7174

SERVICE

Thomas Weaver
P.O. Box 1056
Bremerton, WA 98337

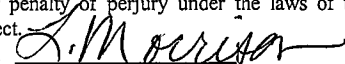
This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED August 11, 2008, Port Orchard, WA 
Original **AND ONE COPY** filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402; Copy to counsel listed at left.

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I. ISSUE

DOES RCW 9.41.040(2)(a)(iii), THE PROHIBITION AGAINST FIREARM POSSESSION BY PERSONS UNDER AGE 18, CONSTITUTE AN UNREASONABLE RESTRICTION ON APPELLANT'S RIGHT TO BEAR ARMS IN LIGHT OF THE U.S. SUPREME COURT'S DECISION IN *DIST. OF COLUMBIA V. HELLER*?

II. ARGUMENT

RCW 9.41.040(2)(a)(iii), THE PROHIBITION AGAINST FIREARM POSSESSION BY PERSONS UNDER AGE 18, DOES NOT CONSTITUTE AN UNREASONABLE RESTRICTION ON APPELLANT'S RIGHT TO BEAR ARMS IN LIGHT OF THE U.S. SUPREME COURT'S DECISION IN *DIST. OF COLUMBIA V. HELLER*, WHERE THE STATUTE DOES NOT BAN POSSESSION IN THE HOME.

Courts review issues of constitutionality de novo. *State v. Chavez*, 163 Wn.2d 262, 267, 180 P.3d 1250 (2008), citing, *State v. Eckblad*, 152 Wn.2d 515, 518, 98 P.3d 1184 (2004). Courts should presume a statute constitutional until it is shown beyond a reasonable doubt to be otherwise. *State v. Myles* 127 Wn.2d 807, 812, 903 P.2d 979 (1995).

Both the Second Amendment of the U.S. Constitution,¹ and, Art. I, §24 of the Washington State Constitution,² provide an individual right to bear

¹ "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. Amend II.

² "The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men." CONST. art. I, §24.

arms. However, that right is not unrestricted.

In Dist. of Comumbia v. Heller, 128 S.Ct. 2783 (2008)³, the United States Supreme Court considered a law that essentially banned everyone from owning a handgun within the federal jurisdiction of the District of Columbia. Heller, 128 S.Ct. at 2788. The same law also required possession of legally owned firearms in the home to be unloaded, disassembled, or bound by trigger lock, rendering them inoperable. Id.

The Court found the D.C. law unconstitutional based on its total ban of handgun ownership, as well as its infringement on the right to self-defense in one's own home, as otherwise guaranteed by the Second Amendment. Id. at 2817.

However, the Court was careful to note that the right to possess arms is not unlimited. As the Court noted:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose...For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues...Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of

³ Dist. of Columbia v. Heller, ___ U.S. ___, 128 S.Ct. 2783, ___ L.Ed.2d ___ (2008).

firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Heller, 128 S.Ct. at 2816-17 [citations omitted].

The Court further noted that the examples of regulatory measures it cited are only examples and should not limit other reasonable restrictions available to state and local government agencies to combat the problem of firearm violence. Id at 2822.

Similarly, the right to bear arms under the Washington State Constitution is not absolute, and is subject to reasonable regulation by government. City of Seattle v. Montana, 129 Wn.2d 583, 593, 919 P.2d 1218 (1996). A regulation remains constitutional so long as it is a “reasonable limitation.” Id at 594, citing, Morris v. Blaker, 118 Wn.2d 133, 145, 821 P.2d 482 (1992).

Reasonability is determined by balancing the public benefit of the regulation against the extent to which it frustrates the purpose of the constitutional provision. Montana 129 Wn.2d at 594. Where public safety is concerned, a legitimate regulation is one reasonably necessary to protect the public and substantially related to legitimate ends sought. Id

Art. 1, §1, of the Washington State Constitution provides the legislative branch broad discretion to pass laws that promote health, peace,

and safety of Washington State citizens. *State v. Ward*, 123 Wn.2d 488, 508-09, 869 P.2d 1062 (1994), citing, *State v. Brayman*, 110 Wn.2d. 183, 193, 751 P.2d 294 (1988).

In 1994, the legislature enacted RCW 9.41.040(2)(a)(iii)⁴, limiting the ability for juveniles to possess firearms with the express intent to promote safety and reduce violence in the community. Laws of 1994, 1st Spec. Sess., Ch. 7, §101.⁵ The Statute restricts use of firearms by persons under the age of 18 unless they fall into one of the legitimate use exceptions set out in RCW 9.41.042.⁶

⁴ “A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree....[i]f the person is under eighteen years of age, except as provided in RCW 9.41.042.” RCW 9.41.040(2)(a)(iii).

⁵ “The legislature finds that the increasing violence in our society causes great concern for the immediate health and safety of our citizens and our social institutions. Youth violence is increasing at an alarming rate and young people between the ages of fifteen and twenty-four are at the highest risk of being perpetrators and victims of violence. Additionally, random violence, including homicide and the use of firearms, has dramatically increased over the last decade. The legislature finds that violence is abhorrent to the aims of a free society and that it can not be tolerated. State efforts at reducing violence must include changes in criminal penalties, reducing the unlawful use of and access to firearms, increasing educational efforts to encourage nonviolent means for resolving conflicts, and allowing communities to design their prevention efforts.” Laws of 1994, 1st Spec. Sess., Ch. 7, §101.

⁶ “RCW 9.41.040(2)(a)(iii) shall not apply to any person under the age of eighteen years who is:

- (1) In attendance at a hunter's safety course or a firearms safety course;
- (2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;
- (3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;
- (4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;
- (5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety

Therefore, the restriction on juveniles possessing firearms serves a reasonable public policy and safety purpose, while leaving legal and legitimate firearm activities available to juveniles under the exceptions in RCW 9.41.042.

Unlike the regulation in *Dist. Of Columbia v. Heller*, supra, RCW 9.41.040(2)(a)(iii) does not ban juveniles from possessing handguns, nor does it place any restrictions on the legitimate possession of firearms in the juvenile's home. It only requires that the possession be with the knowledge and permission of the parent or guardian, thus leaving it to the parent, not the State, to decide if the possession is necessary and beneficial.

So long as a juvenile has permission of their parent or guardian, the juvenile's right to possess legitimate firearms is unrestricted in the home. There is nothing in *Heller* to suggest that this kind of restriction violates the

certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;

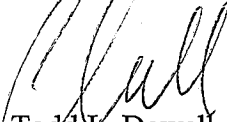
- (6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;
- (7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;
- (8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or
- (9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty." RCW 9.41.042.

U.S. Constitution.

DATED August 11, 2008.

Respectfully submitted,

RUSSELL D. HAUGE
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Dowell", written over the printed name of Todd L. Dowell.

Todd L. Dowell
WSBA No. 18505
Deputy Prosecuting Attorney